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#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

DEBORAH MONTHEI,	)	อลุบาศแกน อิโรโหโบโ ปก
	)	CIVIL NO. 4:01-cv-30510
Plaintiff,	)	, ,
	)	
vs.	)	INSTRUCTIONS TO THE JURY
	)	
MORTON BUILDINGS, INC.,	)	
	)	
Defendant.	)	

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING INSTRUCTIONS:

In this case plaintiff Deborah Monthei was employed by Morton Buildings as a secretary at its Jefferson, Iowa, office from May 1992 until January 26, 2001. She claims that a coworker, construction crew member Chris Dinesen, harassed her by calling her vulgar and demeaning names. Ms. Monthei claims she repeatedly reported this behavior and that no action was taken. Morton Buildings denies that Ms. Monthei was harassed based on her gender or that she reported harassment and that no action was taken.

Morton Buildings agrees that at the year 2000 office Christmas party, Mr. Dinesen called Ms. Monthei vulgar names. Morton Buildings contends Ms. Monthei herself used vulgar language in this incident and on other occasions also. However, Morton Buildings does not agree that this event harassed Ms. Monthei because of her gender on this or any other occasion.

Ms. Monthei terminated her employment on January 26, 2001. Ms. Monthei contends that she was constructively discharged

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from her employment with Morton Buildings due to the harassment of Mr. Dinesen and Morton Building's failure to take appropriate remedial measures.

Morton Buildings contends that Ms. Monthei failed to properly register her complaints. Morton Buildings also denies that Ms. Monthei was harassed based on her gender or that Ms. Monthei was justified in quitting her job.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Members of the jury, the instructions I gave at the beginning of the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

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You must follow the instructions now given you regardless of your opinion of what the law ought to be. You need not be concerned with the wisdom of any rule of law.

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

## instruction no. 2

You shall base your verdict only upon the evidence and these instructions.

#### Evidence is:

- 1. Testimony in person or by deposition.
- 2. Exhibits received by the Court.
- 3. Stipulations, which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pretrial statements and reports, witnesses' depositions, or other miscellaneous items. Only exhibits formally offered and received by the court are available to you during your deliberations, and you will be provided with these. Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

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The following are not evidence.

- Statements, arguments, questions and comments by the lawyers.
  - 2. Objections and rulings on objections.
  - 3. Testimony I told you to disregard.
- 4. Anything you saw or heard about this case outside the courtroom.

## instruction no. 3

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors you may consider in deciding what testimony to believe, for example:

- Whether the testimony is reasonable and consistent with other evidence you believe;
- 2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
- 3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
- 4. Whether the witness said something different at an earlier time.

## instruction no.

Each party has equal rights in court. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of law.

Defendant Morton Buildings acts only through its agents or employees. Any agent or employee of Morton Buildings may bind it by acts and statements made while acting within the scope of the authority delegated to the agent by Morton Buildings, or within the scope of his or her duties as an employee of Morton Buildings.

Certain testimony has been received into evidence from depositions. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

During this trial you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

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In these instructions you are told that your verdict depends on whether you find certain facts have been proved.

The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

Title VII of the Civil Rights Act of 1964 and the Iowa Civil Rights Act provide that it is unlawful for an employer to discriminate against any person because of that person's gender.

Plaintiff Deborah Monthei asserts the following claim against defendant: hostile work environment sexual harassment resulting in a constructive discharge.

On plaintiff Deborah Monthei's claim of hostile work environment sexual harassment your verdict must be for plaintiff and against the defendant Morton Buildings if all of the following elements have been proved by the preponderance of the evidence:

- 1. Deborah Monthei was subjected to abusive language, intimidation, and insult from Chris Dinesen;  $V_{k}$ 
  - 2. Such conduct was unwelcome;
  - 3. Such conduct was based on Deborah Monthei's gender;  $\hat{\mathbb{N}}^{0,N}$
- 4. Such conduct was sufficiently severe or pervasive that a reasonable person in Deborah Monthei's position would find her work environment to be hostile;
- 5. At the time such conduct occurred and as a result of such conduct, Deborah Monthei believed her work environment to be hostile.
- 6. Morton Buildings knew or should have known of the harassment described in paragraph 1. —
- 7. Morton Buildings <u>failed</u> to take prompt and appropriate corrective action to end the harassment.

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant Morton Buildings on this claim. If plaintiff Deborah Monthei has proven all of these elements, then you will consider the questions of constructive discharge and damages with respect to this claim.

### instruction no. $\frac{10}{10}$

The second element of Instruction No. q requires you to determine whether the behavior was unwelcome to Ms. Monthei, and would be unwelcome to a reasonable person under similar circumstances. You must determine whether the conduct was uninvited and offensive. The conduct must be "unwelcome" in the sense that Ms. Monthei did not solicit or invite it and she regarded the conduct as undesirable or offensive.

The third element of Instruction No. \_\_\_\_\_ requires you to determine whether the conduct attributed to Chris Dinesen was based on Ms. Monthei's gender. Conduct is based on gender if it is directed against a woman because she is a woman.

The fourth element of Instruction No. \_\_\_\_\_ requires you to determine whether the conduct was severe or pervasive enough to create a hostile environment. In deciding this issue you must look to the totality of the circumstances. The types of factors you may take into account are the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with Ms. Monthei's job performance and the effect on plaintiff's emotional well being. This list is not exhaustive, and there is no mathematically precise test. A plaintiff must generally show that the harassment is sustained and non-trivial. You should consider all the incidents in combination

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to determine if there was a hostile working environment. You must weigh and sift through the facts to determine whether, taking everything into consideration, a reasonable person would have found the workplace environment abusive.

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You may not return a verdict for plaintiff just because you might disagree with Morton Buildings' actions or policies or believe Morton Buildings acted in a harsh or unfair manner. An employer is entitled to make employment decisions for any reason that does not violate the law concerning employment discrimination.

The parties dispute the circumstances under which plaintiff Deborah Monthei left her employment on January 26, 2001. Defendant Morton Buildings contends that Ms. Monthei resigned voluntarily. If she resigned voluntarily, she would not be entitled to an award of damages because of the termination of her employment. Ms. Monthei contends that she was "constructively discharged." If she was constructively discharged, an award of damages because of the discharge is permissible.

A constructive discharge occurs when an employer causes an employee's work conditions to be so difficult or unpleasant that a reasonable person in plaintiff's situation would have deemed resignation the only reasonable alternative. An employee must, however, give her employer a reasonable opportunity to work out a problem.

In order for Ms. Monthei to recover damages against Morton Buildings resulting from a constructive discharge, she must prove by a preponderance of the evidence the following:

- Morton Buildings' failure to take prompt and appropriate corrective action to end the harassment by Chris Dinesen made her working conditions intolerable, and;
- 2. That her resignation was a reasonably foreseeable consequence of Morton Building's failure to take prompt and appropriate corrective action.  $\mathcal{W}$

If either of these elements has not been proven by a preponderance of the evidence, plaintiff is not entitled to recover damages for the termination of her employment.

If you find in favor of plaintiff Deborah Monthei, then you must award her such sum as you find by the preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of the defendant Morton Building's actions. Plaintiff's claim for damages includes two types of damages and you must consider them separately:

- 1. Wages and benefits Ms. Monthei would have earned in her employment with defendant if her employment had not ceased on January 26, 2001, through the date of your verdict, minus the amount of earnings that plaintiff received from other employment during that time. This is called "back pay." You need not be concerned with any loss of pay or benefits in the future as such issues are for the Court to determine. You may make an award for back pay only if you find plaintiff was constructively discharged as explained in Instruction No. 12.
- 2. Emotional distress sustained by plaintiff in the past. Emotional distress refers to mental or emotional pain and suffering and may include, but is not limited to, mental anguish or loss of enjoyment of life.

The amount, if any, you award for emotional distress cannot be measured by an exact or mathematical standard; the determination of the amount must rest in the sound discretion of the jury. Such discretion must not be exercised arbitrarily or out

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of passion or sympathy or prejudice for or against the parties or to punish, but must be based on a fair, intelligent, dispassionate and impartial consideration of the evidence. The amount you assess for any item of damage must not exceed the amount caused by the defendant Morton Buildings as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Plaintiff has a duty to mitigate or lessen her damages. That is, Ms. Monthei was required to exercise reasonable diligence to locate other suitable employment after her employment with defendant ended and to maintain suitable employment once located. If you find by the preponderance of the evidence that plaintiff failed to seek out or take advantage of an employment opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity. Defendant has the burden of proving Ms. Monthei failed to mitigate her damages.

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

Your first duty on retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person elected is responsible for the orderly, proper and free discussion of the issues by any jurors who wish to express their views. The foreperson will supervise the balloting and sign the verdict form and any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

As jurors, your duty is to consult one another and deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but only after an impartial consideration of evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

Dated this 34 day of Ogtober, 2002.

ROSS A. WALTERS

CHIEF'UNITED STATES MAGISTRATE JUDGE